



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
5 Post Office Square – Suite 100
BOSTON, MA 02109-3912

URGENT LEGAL MATTER – PROMPT ATTENTION REQUIRED
CERTIFIED MAIL – RETURN RECEIPT REQUESTED

May 23, 2014

Douglas Nelson, Sr.
Nelson Farms, Inc.
P.O. Box 1437
Derby Line, VT 05830

Re: Nelson Farm, Bates Hill Road, Derby, Vermont
Request for Information Pursuant to Section 308 of the Clean Water Act

Dear Mr. Nelson:

This letter concerns the discharge and redeposit of soil, rocks, sand and/or other dredged or fill materials into wetlands located on the farm owned by you and/or Nelson Farms, Inc. on Bates Hill Road, in Derby, Vermont (the "Site"), identified by the Natural Resources Conservation Service as Tract 1205, and as generally depicted in the aerial photograph in Attachment A. Based on initial information received by EPA, it appears that approximately several acres of wetlands or other waters have been filled and/or excavated for construction of farm fields and associated drainage features since approximately 2011. By this letter, EPA seeks information concerning your involvement in discharge activities that may have impacted wetlands and/or other waters at the Site.

Under the provisions of the federal Clean Water Act (the "Act"), 33 U.S.C. § 1251 *et seq.*, the discharge of pollutants (in this case soil, rocks, sand, and/or other dredged and fill material) into waters of the United States, including most wetlands, is unlawful except as authorized by, among other things, a permit issued pursuant to Section 404 of the Act, 33 U.S.C § 1344. A federal permit is required under Section 404 of the Act, for those activities which discharge dredged, or fill material into the waters of the United States, including most wetlands. The U.S. Army Corps of Engineers (the "Corps") is responsible for accepting applications for and issuing or denying permits to perform such work, while the EPA reviews and comments to the Corps on permit applications received. Both agencies share enforcement responsibilities under the Act, which provides administrative and judicial penalties for violations.

A review of the Corps records shows that you did not obtain a federal permit authorizing the activities which occurred in wetlands and waterways at the Site. Since a federal permit was not issued for this work, you should not perform any additional work in wetland areas or other waters at the Site.

Section 308(a) of the Act, 33 U.S.C. § 1318(a), provides the EPA with the authority to require the disclosure of information necessary to determine whether any person has violated any provision of the Act. Accordingly, you are hereby requested pursuant to Section 308(a) to furnish the information identified below **within 30 days of receipt of this letter.**

I. Definitions.

For purposes of this information request, the following terms are defined as:

- "Fill" means any material deposited on the Site, regardless of origin, including but not limited to, rock, sand, clay, gravel, manure, wood chips, stumpage, dredged spoil, and any other excavated or relocated material. Material "moved locally" from one location on a Site and placed in another location of the same Site meets the definition of "fill."
- "Dredged materials" or "dredged spoils" means any material that is excavated or dredged from a water body, including wetlands.
- "Deposit" means the placement, discharge, redeposit, redistribution, or addition of any material, including fill or dredged material, as defined above.
- "Process wastewater" means water directly or indirectly used in the operation of the facility (here the Farm Site) for any or all of the following: spillage or overflow from animal watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding operation facility aspects/structures; direct contact swimming, washing or spray cooling of animals; and dust control. "Process wastewater" also includes any water (e.g., rain, snow, snow melt, water used in the facility's operation, etc.) which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, bedding, or other material or product used in, or resulting from, the confinement of animals. See 40 C.F.R. § 122.23.
- "Manure" includes animal waste (i.e., solid or liquid animal waste), bedding, compost, and raw materials or other materials (used in or otherwise resulting from the confinement of animals) commingled with manure or set aside for disposal (which includes land application).

II. The Site

- 1) Provide the name, address, and telephone number and position of all persons or entities having an ownership interest in the parcel of property encompassing the Site, a detailed description of each person or entity's ownership interest, the date on which each person or entity acquired an interest in the Site, and from whom each person or entity acquired that interest.
- 2) Provide all reports, aerial photographs, evaluations, and/or Site plans that relate to the Site, including soil reports, soil surveys, wetland delineations, farm plans, engineering plans, construction plans, and survey reports prepared at any time. If you are not in possession of any of the reports listed above, please indicate the names, addresses, and telephone numbers of the parties who you believe may be, have been, or are in possession of such documents.
- 3) Specifically describe the work that you have undertaken (e.g. land clearing, grubbing, excavating, grading, filling, etc.) which resulted in deposit of dredged or fill material into wetlands and/or waterways at the site. Please use the attached aerial photograph to indicate the location(s) of where the excavated materials were deposited. Also state the specific dates during which excavation and deposit of dredged and/or fill material (including soil, rock, sand, etc.) occurred.

- 4) Please identify which of the activities described in response to Question 3 resulted in the placement or relocation of dredged or fill material. State the acreage of wetland and waters directly impacted as a result of dredge or fill activities. This should include those areas grubbed, graded or covered with fill material, and otherwise altered through modification of drainage pattern.
- 5) State the source of, type, and amount of dredged and/or fill material placed in wetlands, and waters at the Site, and identify the specific location of placement or relocation. In addition, please describe the amount and type of all manure, fertilizers, pesticides, soils or other substances placed on the Site and identify the specific location of placement for all such materials.
- 6) Provide copies of all contracts, invoices or forms of proof of payment you have, or have had, with each vendor, contractor, and subcontractor relative to the acquisition, delivery, and placement or relocation of dredged or fill material at the Site.
- 7) Provide a list of all consultants, contractors, and subcontractors (including their names, mailing addresses, and telephone numbers) that performed work at the Site since you acquired the property. Identify all persons (including their names, mailing addresses, and telephone numbers) who directed and/or controlled work at the Site, including work in wetlands and waters.
- 8) Provide copies of all contracts, invoices, or forms of proof of payment you have, or have had, with the consultants, contractors, and subcontractors listed in question #6 above. If no contracts or related paper work exist, describe your business arrangement with each consultant, contractor, and subcontractor relative to work at the Site.
- 9) Identify the types of equipment used to excavate or move soil material within wetlands and waters at the Site. State the names, addresses and telephone numbers of the owners and operators of the equipment for all construction activities occurring at the Site since you purchased it.
- 10) Provide copies of all correspondence, including but not limited to any permits or applications for permits, with any local, state, or federal government agency pertaining to the deposit, retention, or removal of dredged and/or fill material into wetlands. In addition, provide correspondence pertaining to any other work occurring in wetlands or waters at the Site.
- 11) Provide all documents relating to any wetland determinations, appeals of wetlands determinations, and wetlands delineations performed by the Natural Resources Conservation Service ("NRCS"), or any other person or entity, at the Site. Please include all maps and plans prepared for or by the NRCS depicting field labels and farm and tract designation for the Site.
- 12) If you have had any verbal communications with any local, state, or federal government agency, pertaining to the deposit, retention, or removal of dredged and/or fill material, or to any other work occurring in the wetlands or waters at the Site, please describe them, identifying all persons involved, the date of such communications, and the substance of the communications.
- 13) Provide copies of any documentation related to the work that occurred in wetlands and waters at the Site, including but not limited to:
 - a. reports or other documents provided to or from the Vermont Agency of Agriculture, Food and Markets ("AAFM");

- b. reports or other documents provided to or from the U.S. Farm Service Agency ('FSA');
- c. any maps, site plans, conservation plans, soil reports, engineering, construction or survey reports, wetland delineations, recommendations, approvals, orders, citations, evaluations, assessments, documents, or other written or electronic communications prepared at any time;
- d. memoranda, notes, and descriptions of verbal communications with NRCS, FSA or the Vermont AAFM (including the date that they occurred) pertaining to proposed or existing work at the Site.

14) State your current and future plans for the Site.

15) State whether you have cultivated and/or harvested agricultural crops (including but not limited to silage) in areas of altered wetlands and waters. State the amount of agricultural products harvested in each year from 2011 to the present, and state the market value of the harvested materials.

16) Explain in detail why discharges of dredged and/or fill materials into wetlands or waters occurred without the required Corps permit, and who was responsible for obtaining the Corps permit for the Site. If you believe that a Corps permit was not required, please state specifically the reasons for such belief.

17) Have you or anyone else with an ownership interest in the Site ever sought a Corps permit for past projects involving work in wetlands or waters? Please provide information indicating the name and location of the property, the date of the application or transaction, the type of activity, and a copy of the permit or any documents relative to your communications with the Corps.

18) Provide the following information:

- a. The type of animal(s), if any, produced at the Site;
- b. The number, type, and location of animal confinement structures (*i.e.*, number of barns, houses, pens, feedlots, etc.) at the Site;
- c. The number, type, and location of manure containment structures at the Site; please indicate the storage capacity for each containment structure;
- d. The number, type, capacity, and location of silage storage areas or structures at the Site;
- e. The total number of animals the Site was designed to confine;
- f. The total number of animals the Site is permitted to confine (if applicable);
- g. The total number of animals actually at the Site currently;
- h. A copy of all AAFM permits for the Site;
- i. Indicate whether you, or anyone acting on your behalf or on behalf of Nelson Farms, Inc., applies "manure" and/or "process wastewater" (as defined above) to the land at the Site and, if so, on what fields;
- j. A copy of the Site's nutrient management plan; and
- k. A copy of the Site's land application records since 2008.

19) State whether animals at the Farm Site have access to or otherwise come in contact with streams, wetlands, or other waters at the Farm Site, and if so, which waters.

20) State whether "manure" and/or "process wastewaters" (as defined above) at the Farm Site flow, or have in the past flowed to, streams, wetlands, or other waters at the Farm Site through a man-made ditch, flushing system, or other man-made device. Your answer should include any flows that may have occurred during periods of high precipitation or as a result of snow melt.

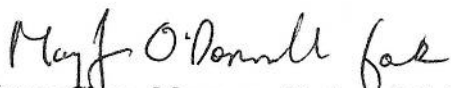
You may assert a business confidentiality claim with respect to part or all of the information submitted to EPA in the manner described at 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by the means, of the procedures set forth in 40 C.F.R. 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to you. Please be aware that state laws governing confidential business information may differ from the federal regulations.

If you have a consultant, attorney, or other agent respond to this inquiry on your behalf, please include a certification, stating that such agent has the authority to respond for you; and sign the return "Declaration" form provided. This certification must include your signature.

Please be aware that failure to respond to this information request may subject you to administrative and judicial enforcement action pursuant to Section 309 of the Act, 33 U.S.C. § 1319, including, among other things, imposition of civil penalties up to \$187,500.

Please send your response by certified mail, to Mr. James Chow, Office of Environmental Stewardship, (Attn: Denise Leonard), U.S. EPA Region 1, 5 Post Office Square, Suite 100, Mail Code OES05-1, Boston, Massachusetts 02109-3912. If you have any questions concerning the required information, please contact Denise Leonard of my staff at (617) 918-1719. Legal questions should be directed to Margery Adams, the EPA attorney handling this matter, at (617) 918-1733.

Sincerely,



James Chow, Manager – Technical Enforcement Office
Office of Environmental Stewardship

Attachments: Attachment A, Photograph of Tract 1205
Small business information sheet
Business confidentiality information
Declaration – Agent Certification

cc w/o attachments

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